

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**SAMUEL BOOKER**  
Claimant

**FLAGGER PROS USA LLC**  
Employer

**APPEAL 20A-UI-00233-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/03/19**  
**Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Code § 96.5(2)a – Discharge for misconduct  
Iowa Admin. Code r. 871-24.35 – Filing

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the November 1, 2019 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 28, 2020, at 8:00 a.m. Claimant participated. Employer participated through Victoria Johnson, Human Resources Manager. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUE:**

Whether claimant's separation was a discharge for disqualifying job-related misconduct.  
Whether claimant filed a timely appeal.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at 1504 Prospect Avenue, Waterloo, Iowa on November 1, 2019. That was claimant's correct address on that date. Claimant does not know when he received the decision. Mail from Des Moines, Iowa is typically received in Waterloo, Iowa in two to three days. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by November 11, 2019. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. November 11, 2019 was a legal holiday; therefore, the due date was extended to Tuesday, November 12, 2019. Claimant appealed the decision at his local office on January 7, 2020. Claimant's appeal was received by Iowa Workforce Development Appeals Bureau via facsimile on January 7, 2020. Claimant's delay in submitting his appeal was due to his confusion when reading the decision. Claimant did not seek assistance at his local office with reading and understanding the decision.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871-24.35(1)(c) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
  - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

Claimant received the decision prior to the due date but did not submit his appeal for approximately two months. Claimant's delay in submitting his appeal was due to his confusion and not due to any agency error or misinformation or delay of the United States Postal Service. Claimant's appeal is not timely; therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

**DECISION:**

The claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The November 1, 2019 (reference 02) unemployment insurance decision is affirmed.

---

Adrienne C. Williamson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

---

Decision Dated and Mailed

acw/rvs